

Nisha Rani Aggarwal Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Jan-11-2002

Reported in : 2002IIAD(Delhi)858; 2002(2)ARBLR471(Delhi); 96(2002)DLT557; 2002(62)DRJ147

Judge : J.D. Kapoor, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 11; Limitation Act

Appeal No. : AA No. 40/98

Appellant : Nisha Rani Aggarwal

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Manish Goyal, Adv.

Advocate for Pet/Ap. : R.K. Sharma, Adv

Judgement :

J.D. Kapoor, J.

1. This is an application under Section 11 of the [Arbitration and Conciliation Act, 1996](#) for appointment of an Arbitrator.

2. The petitioner is the widow of late Sh. Satish Kumar Aggarwal. Late Sh. Satish Kumar Aggarwal had entered into the contract for the work 'C/o 72 nos.Cat.III

DUS. 48 Nos.Cat.II DUS and 72 Nos. S/g bldg.work/i/x/int.W/S&S;/I etc. complete' with respondent No. 1. Certain disputes arose out of the said contract which were to be settled in accordance with Clause 25 of the agreement i.e. Arbitration clause. On the letter of the petitioner, One Sh.S.C. Kaushal was appointed as Arbitrator.

3. Notice was sent to the applicant at the old address where she had been residing when her husband was alive but could not be served as she temporarily shifted to Chandigarh after the death of her husband. When she approached the Arbitrator for being made legal heir of her deceased husband, the Arbitrator informed her that he had already returned the file to the DDA. On this, the applicant moved DDA with a request that a new Arbitrator be appointed but her request was declined vide letter dated 15.2.1996. Feeling aggrieved, she moved the instant application.

4. It appears that the applicant did not inform the Arbitrator about her change of address and the Arbitrator sent notice at the old address. Being a household lady, she may not be aware of the legal obligation that it is the duty of the party to inform the court or the Arbitrator about his/her change of address so that communication is received by the party concerned. But such inaction on the part of the petitioner/applicant cannot operate adversely against her or to her detriment.

5. Merely because a party much less a housewife sends a notices does not mean that he or she is expected to know the legal provision or requirement that he or she has to inform the court or the Arbitrator about her change of address. Non-compliance of such a formality cannot or ought not be allowed to forfeit the right of the party to be heard before any adverse order or action is taken. One cannot be oblivious of the fact that the applicant being household lady was under bereavement because of untimely death of her husband. Provisions of Limitation Act are not strictly applicable to arbitration proceedings and for that purpose for invocation of arbitration clause unless specific period is stipulated in the agreement. Even in that case, there is no rule of thumb. Every case has to be adjudged in the face of its facts. Facts of the case are guiding factors.

6. It is not a case where the applicant has not invoked Clause 25 of the agreement for six/seven years. Arbitrator was appointed on her request in 1991. The Arbitrator declined to entertain her request for being made L.R. of the deceased

contractor on the plea that he has already returned the file to the DDA for want of service of notice. It is not again a case where she remained inactive and did not take any action. She again approached the DDA for appointment of Arbitrator but the respondent-DDA declined her request vide letter dated 15.2.1996.

7. Taking overall view of the facts and keeping in view the interests of justice, there is no perceptible ground to decline the application. The application is allowed. Respondent No. 1-DDA is directed to appoint an Arbitrator within six weeks.

8. However, the objection of the respondent-DDA that applicant shall not be entitled for interest during the period when she did not inform the Arbitrator about her changed address, shall be decided by the Arbitrator while making the award.

9. Petitioner is disposed of accordingly. Copy of this order be sent to the respondent-DDA forthwith.

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